United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

POINT II

75-7222

ORIGINAL

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P/S

In The

United States Court of Appeals

For The Second Circuit

E[illegible]AS LESTER, M.D.,

Petitioner-Appellant,

vs.

EMLYN I. GRIFFITH, Regents Committee On Discipline,

Respondent-Appellee.

On Appeal from the United States District Court for the Eastern District of New York

BRIEF FOR PETITIONER-APPELLANT

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ELIAS LESTER, M.D.,

Petitioner-Appellant,

-against-

EMLYN I. GRIFFITH
Regents Committee on Discipline,

Respondent-Appellee.

- x

APPELLANT'S BRIEF

PRELIMINARY STATEMENT

This is a "Target Case."

Misrepresentation on the part of the Attorney General of the State of New York was practiced upon the Court, U.S.D.J. John R. Bartels and the petitioner pro se, a medical doctor.

The petitioner pro se was given the right by the Hon. John R. Bartels which was agreed to in open Court by the N.Y.S. Attorney General, to subpoena six (6) witnesses for confrontation and cross-examination without any direction as to "how to" effect same as a pro se.

If the Court, in its wisdom, states it was misled by the Attorney General, the tactics employed by the Attorney General from the initial presentation of the charges against the medical

doctor to the Medical Grievance Committee, up and through the March 21, 1975 hearing before the Hon. John R. Bartels were violative of the petitioner pro se's constitutional rights resulting in revocation of his medical license by the Medical Grievance Committee, then suspension of the doctor's medical license by Emlyn I. Griffith, Chairman of the Regents Committee on Discipline which was confirmed by order of the Commissioner of Education.

THE FACTUAL CONTEXT AND STATEMENT OF THE CASE

In 1972, in Dade County, Florida, petitioner pro se was charged with giving a building inspector a $60 bribe and after a Florida trial resulting in a hung jury, was jailed, placed under twenty-five thousand ($25,000) dollar bail, tried again and acquitted on the grounds of insanity after a psychiatric staff of three, including an M.D. and two psychologists, found he had suffered an acute psychosis, with a continuing paranoid element to his thinking, that he is presently capable of properly answering the charge and "at the time [1972] of the alleged offense with which he is charged, that he did not know right from wrong or the nature and consequence of his acts." Immediately following this quotation (underlining supplied), the N.Y.S. Attorney General appended to the psychiatric Florida finding of

1972 as if it still applied to the 1974 charge that the Attorney General had prepared for the Medical Grievance Committee the statement, unsupported, based on no 1974 examination of the doctor, no presentation of "live witnesses", that (Respondent has continued to practice medicine in this state while his ability to practice is impaired by his mental disability as set forth above, which continues to the present time). The words in the parenthesis were supplied and added on solely by the N.Y.S. Attorney General.

The N.Y.S. Attorney General's statement attached to, and indented to make it appears that the 1972 report of the three (3) man Florida psychiatric staff is a present evaluation in 1974 based on the N.Y.S. Attorney Generals' personal statement that the doctors' mental disability as set forth above, (which continues to the present time).

The petitioner pro se, however, as part of his affidavit attached as exhibits, five (5) findings, three from M.D.'s, one from a certified psychologist and one from an M.D. psychiatrist attesting to his soundness of mind.

The fraudulent charge and accusation against the petitioner pro se who was never examined by any psychiatrist or psychologist from the N.Y.S. Attorney General's office, the Medical Grievance Committee, the Regents Committee on Discipline or

the office of the Commissioner of Education initiates the tactics employed to get this doctor -- the pro se.

The charge of the N.Y.S. Attorney General must result in annulment of all determinations from the revocation to the suspension of the petitioner pro se's medical license.

This charge and the continued mispresentations of the N.Y.S. Attorney General, all of which appear in the record in the appendix and are brought out in this brief deprived the petitioner pro se, a U.S. citizen, of his constitutional rights.

It is firmly believed that the medical doctor is "the target" because of a one million dollar libel suit presently pending against a politician, in a N.Y. State Supreme Court, who as reported in the "N.Y. Daily News" and the L.I. newspaper, "Newsday" was out to get the petitioner pro se, Elias Lester, M.D.

This is borne out by the defendant in that case who in his answer filed in N.Y. State Supreme Court, admits to the accusations against the doctor, Elias Lester, M.D.

With the doctor's license lifted just shortly before the trial set for a day certain in June 1975, it is needless to point out the disasterous impact.

Elias Lester, M.D. pro se, filed the following papers in the U.S.D.C.: Eastern District of N.Y.,

Order to Show Cause Why Respondent Should Not Be Enjoined from Revoking Petitioner's M.D. License and Notice, (Filed February 19, 1975), Page 3a of the Appendix.

Petition in Support of Motion to Enjoin Respondent from Revoking Petitioner's M.D. License or to Grant the Subpoena of Witnesses (Filed February 18, 1975), Page 6a of the Appendix.

Affidavit in Further Support of Motion with Attached Exhibits A, B, C-1, C-2, C-3, C-4, C-5 (Filed February 19, 1975), Page 10a of the Appendix.

On February 28, 1975, the N.Y.S. Attorney General obtained the pro se's consent to an adjoinment of the March 14, 1975 hearing as appears in the letter of John J. O'Grady, Assistant Attorney General (Filed March 3, 1975), Page 20a of the Appendix.

The deliberate purpose was to delay and make sure that the report of the Regents Committee on Discipline was submitted to the N.Y.S. Department of Education and crucify the medical doctor. This is borne out in the transcripts of the March 21, 1975 hearing (before U.S.D.J. John R. Bartels) starting at page 30a of the Appendix which is replete with the misrepresentations of the N.Y.S. Attorney General who led the Court and the petitioner pro se to rely on the fact that there was still to be an evidentiary hearing with the six (6) live witnesses. In the meantime, known to the N.Y.S. Attorney General, the report was already in.

The case against the doctor is so substantial a perversion of justice against American Society as to be comparable to the case of Ralph Nader against General Motors.

In furtherance of the N.Y.S. Attorney General's scheme, making a fool of an esteemed Federal Court and depriving a medical doctor of his constitutional rights, there is the Affidavit in Opposition to Petitioner's Motion Containing No Exhibits (although sworn to as being annexed to his affidavit), served late and filed subsequent to hearing (Filed March 24, 1975) starting at page 21a of the Appendix. Also see the Docket Entries, page 1a of the Appendix.

The service and filing of the N.Y.S. Attorney General's affidavit in opposition was contrary to the rules of Judge John R. Bartel's Court published in the New York Law Journal. This too appears at pages 32a, lines 23 and 24 and page 33a, lines 13 through 23 of the Appendix (Transcript).

In furtherance of this plan to "get" the doctor when asked by the Court on March 21, 1975 the date of the hearing why no exhibits you swear are attached to your affidavit the N.Y.S. Attorney General answers at page 35a of the Appendix (Transcript), "I didn't know we had an attorney in this case."

At this point it should be noted that the attorney was hired only to argue the motion on March 21, 1975 and prior thereto and

subsequent thereto, until retention to prepare this brief, the medical doctor acted strictly in his own behalf, -- a pro se in every sense.

The attorneys work pursuant to his hiring arrangement with the pro se commenced at 10 a.m. on March 21, 1975 and ended immediately on the dismissal of the case, without prejudice, by U.S.D.J. John R. Bartels from the bench.

It was stated by U.S.D.J. John R. Bartels as the attorney was walking out of the courtroom, his job completed, that the petitioner pro se could go "downstairs" and file an appeal. The pro se did file his own appeal on April 7, 1975 without knowledge or advice that, perhaps, there should be a three (3) judge panel.

In the meantime, even the Commissioner of Education's order dated April 7, 1975, page 80a of the Appendix, suspending the medical license of the petitioner pro se had already been executed.

The Federal Court, misled, had already intervened, and was relied on by the pro se. The open Court proven misrepresentations of the N.Y. State Attorney General is of so great importance to our system of justice that Federal intervention is absolutely necessary.

The exceptional circumstances of this case warrant this

Court's intervention.

QUESTIONS PRESENTED

1. Where a right to subpoena witnesses is granted by a Federal Court and agreed to by the N.Y.S. Attorney General, without direction to a petitioner pro se as to the "how to" accomplish, is the N.Y.S. Education Law constitutional?

2. Is the N.Y.S. Education Law unconstitutional where the Medical Grievance Committee in revoking the petitioner pro se's medical doctors license were not of "the particular profession" of the M.D. because the chairman of the Medical Grievance Committee and another member had D.O. degrees, and not M.D. degrees?

3. Where the charges prepared by the N.Y.S. Attorney General deliberately associates a 1972 determination of a three (3) man Florida psychiatric staff; making it appear that it is part of a present determination at the time of the presentation of the charges to the Medical Grievance Committee in 1974, and where no examination of the petitioner pro se was made by them or anybody on behalf of N.Y. State, and no live witnesses were presented, resulted in a determination revoking the medical doctor's license to practice, it was not based on substantial legal evidence as required by the N.Y. State Education Law and was in denial of due process under the U.S. Constitution? The reduction from revocation to suspension flowed from this.

4. Where the N.Y.S. Attorney General misrepresented, and as the Court stated misrepresented and misled it and misrepresented and misled the petitioner pro se, violated the due process clause of the U.S. Constitution.

5. Will the Federal Court intervene in unusual circumstances where substantial constitutional rights of a petitioner who appeared pro se were violated?

ARGUMENT

POINT I

THE NEW YORK STATE EDUCATION LAW IS UNCONSTITUTIONAL.

A. § 6510 1.d (4) of the N.Y.S. Education Law provides:

> "(4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him, and to have subpoenas issued in his behalf to require the production of witnesses and evidence in manner and form as prescribed by the civil practice law and rules."

The language of this section is specific as stated, "to have subpoenas issued in his behalf to require the production of witnesses .... A licensee appearing pro se cannot be denied this right making him a second class citizen because of a procedural dilemma to have subpoenas issued in his behalf."

The U.S.D.J. John R. Bartels directed from the bench the issuance of subpoenas for six (6) witnesses. Appendix (transcript) page 40a, lines 21 & 22; 45a line 19; 47a lines 1 through 9; 49a lines 2 & 3; 51a lines 12 through 21.

The "how to" is not provided a licensee pro se.

The right to subpoena granted by law is devoid of procedural remedy to a pro se, vigorously asserting his right, yet denied ministerial aid or direction. This is no right at all. The Education Law above stated is unconstitutional.

POINT II

THE HEARING BY THE MEDICAL GRIEVANCE COMMITTEE WAS NOT IN ACCORDANCE WITH THE N.Y.S. EDUCATION LAW AND WAS NULL AND VOID AND, IN ADDITION, RECOMMENDING REVOCATION OF THE RIGHT TO PRACTICE HIS PROFESSION, THE MEDICAL DOCTOR WAS DEPRIVED OF DUE PROCESS OF LAW.

B. § 6510 2.a. of the N.Y.S. Education Law provides:

"2. Hearing procedures.

a. Hearing panel. The hearing shall be conducted by a panel of five or more members of the committee on professional conduct for the particular profession. The panel shall be appointed by the committee chairman who shall designate the panel chairman."

2.a. above provides for "a panel of five or more members of the committee on professional conduct for the particular profession."

The appellant was a medical doctor.

The hearing panel did not consist of the medical doctor's peers.

The hearing panel requires "five or more members. . . for the particular profession." This hearing was not in compliance with the above law.

The chairman of the five (5) man panel, Max L. Kamen, is not a medical doctor. Philip F. Fleisher, another panel member is not a medical doctor. "D.O." appears after their names and not M.D. See Appendix (Report of Findings) page 69a.

The word "particular" dictionary defined is "Pertaining to one and not to more; special; not general; individual; considered separately; peculiar; personal."

The two members of the panel Max L. Kamen and Philip F. Fleisher with "D.O." after their names rather than M.D. are not particular members of the appellants profession who is a medical doctor. A D.O. is not an M.D.

The three (3) remaining panel members are M.D.'s but the N.Y.S. Education Law requires five (5) or more of "the particular profession."

The charges are first presented to the Medical Grievance Committee, (the Hearing Panel) and all procedures and determinations flow from them.

The determination of the Medical Grievance Committee was null and void as it was not in accordance with the N.Y.S Education Law.

The Medical Grievance Committee (the initial Hearing Panel) recommended revocation of the pro se's license to practice his profession resulting in suspension by the Commissioner of Education on April 7, 1975 as appears at page 80a and 81a, marked Exhibit VI of the Appendix.

The intitial hearing was not a "peer review" in accordance with the law, depriving the pro se of his right to practice his

profession thereby denying him due process of law.

Further denial of due process of law appears in Point IV.

POINT III

THE N.Y.S. EDUCATION LAW REQUIRES THAT THE PANEL'S DETERMINATION OF GUILT SHALL BE BASED ON SUBSTANTIAL LEGAL EVIDENCE WHICH WAS LACKING IN THIS CASE.

§ 6510 2.b. of the N.Y.S. Education Law provides:

> "b. Conduct of hearing. The evidence in support of the charges shall be presented by the attorney general or his designee. The licensee shall have the rights required to be stated in the notice of hearing (subparagraph d of subdivision one of this section). The panel shall not be bound by the rules of evidence, but its determination of guilt shall be based on substantial legal evidence."

The charges in the form of a petition against the medical doctor were prepared by the Attorney General and appears in subdivisions (a) and (b) on pages 83a and 84a of the Appendix.

The charges on each of these pages are indented for the purpose of focusing the most direct attention. If at page 83a of the Appendix the Court would count twelve (12) lines up from the bottom there is a quotation mark with a quote starting "I . . . . and continuing with the quotation at the top of the page following, page 84a of the Appendix with the quotation mark ending after the words, and the consequence of his acts."

That which follows, namely, Respondent has continued to practice medicine in this state while his ability to practice is impaired by his mental disability as set forth above, which continues to the present time is indented and made to appear as if it were part of the quotation of the Florida psychiatrists.

The doctor never practiced in the State of Florida and the only examination of the doctor was by the Florida psychiatrists in 1972.

This non quote, following a true quote as if it were part of a quotation and indented to misrepresent and direct all attention to an unfounded conclusion, as the doctor was not examined by any psychiatrist nor ever presented with a "live witness" against him at any hearing in New York State. This was deliberate on the part of the Attorney General to achieve the lifting and ultimate suspension of the medical doctor's license.

At page 48a lines 22 through 26 in response to the Court's question concerning the presence of any witnesses at the hearing, the Court at page 49a lines 1 through 3, asked the Attorney General "Is that so?" And the Attorney General replied, "At the evidentiary hearing, I presented no live witnesses." None ever were presented at any time.

The charges in the petition were so prepared to make a 1972 examination appear to be an authentic statement applicable to the 1974 charges. This was deliberately misleading and distor-

ted, creating an injustice and deprivation of professional's livelihood because a determination was made that was not founded upon sufficient legal evidence to sustain the same, particularly, as admitted by the Attorney General that no live witnesses were presented -- and this applied to all of the hearings.

In addition, the Florida State Attorney, Richard E. Gerstein, as appears in paragraph (b) page 76a of the Appendix, dated his charges in an information dated November 2, 1971, for an alleged bribery charge on November 2, 1972. The entire proceeding has a bad smell carried over by the N.Y.S. Attorney General.

In contradistinction to what the N.Y.S. Attorney General charged, the doctor in his Affidavit in Further Support of Motion with attached Exhibits A, B, C-1, C-2, C-3, C-4, and C-5 at pages 10a through 19a of the Appendix in Exhibits C-1, C-2, C-3, C-4 and C-5 reports from two medical doctors; two M.D. psychiatrists and one certified psychologist attesting to present soundness of mind with no mental impairment.

This evidence based on present expert written evaluation was ignored but the 1972 mental evaluation prepared by the Attorney General was made to appear that it was a present determination.

The determination, so severe was not founded upon sufficient legal evidence to sustain the same.

POINT IV

THE RIGHTS OF ELIAS LESTER, M.D. WERE FURTHER VIOLATED UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

A. The U.S.D.J. John R. Bartels from the bench granted the pro se the right to subpoena six (6) witnesses.

B. The Attorney General's misrepresentations to the U.S.District Judge, the petitioner pro se and in the proceedings resulting in first, permanent revocation and then suspension of his medical license were violative of appellant's due process rights.

The above is substantiated in the record and no disciplinary or Court proceeding includes the power to trample on a physician's constitional rights. "Due process of law play a fundamental part in the situations involving the suspension or revocation of legal or medical professional licenses. It is not the issue of whether a lawyer or medical practitioner is entitled to due process under these circumstances that has been the subject of judicial concern, but, instead, whether, as to both matters of substance and matters of procedure, he has, in fact, been afforded such due process."

The pro se was not afforded due process.

The Attorney General representing the Hearing Panel, the Board of Regents and the Department of Education and having drawn up the petition and charges, was present at all hearings, knew each and every step and procedure undertaken by them and was aware of their findings and recommendations before being put in the form of a report, and knowing the date of when each written report would be made withheld and did not disclose this information to the Court and to the pro se. This appears in the transcript.

The result is a denial of due process because the judge below and the pro se were misled as shown in the appendix (transcript) on the pages hereinafter referred to.

Until March 21, 1975, the date of the hearing before the Hon. John R. Bartels both the judge and the petitioner pro se believed and relied on the fact that an evidentiary hearing was still to take place and that the six (6) witnesses as directed from the bench and agreed upon by the Attorney General would be subpoenaed and present for confrontation and cross-examination at an evidentiary hearing.

Yet known to the Attorney General there was already a report in writing dated March 10, 1975 signed by Emlyn I. Griffith, Chairman of the Regents Committee on Discipline

suspending the pro se's medical license.

On February 28, 1975 orally and by letter, the Attorney General obtained the pro se's consent to an adjoinment of the case from March 14, 1975 to March 21, 1975. This appears on page 20a of the Appendix.

In the meantime, unknown to the Court and the pro se, the medical doctor's license previously revoked by the Medical Grievance Committee was now suspended by Emlyn I. Griffith, Chairman of the Regents Committee on Discipline on March 10, 1975. This appears on page 86a of the appendix incorporated in the Commissioner of Education Order dated April 7, 1975, Exhibit VI of the Appendix.

Elias Lester, M.D. as did the Court at all times up and to March 21, 1975, still expected an evidentiary hearing. See page 35a lines 19 through 24 and page 47a lines 1 through 9 of the Appendix (transcript) where the Court states no final action was taken and that it was misled by the Attorney General, to believe there was still to be an evidentiary hearing.

At the hearing on March 21, 1975 in the Court below, the Attorney General who in his affidavit sworn to March 20, 1975 and served that day on the petitioner pro se states under oath, that numerous exhibits are attached. This Affidavit in

Opposition to Petitioner's Motion Containing No Exhibits, served late and filed subsequent to hearing (Filed March 24, 1975) appears at pages 21a through page 29a in the Appendix

As part of the scheme to deny the pro se his constitutional rights (and it is so stated by U.S.D.J. John R. Bartels at page 35a lines 22 and 23 that "There is a question of due process involved, as well as a deprivation of his civil rights. I suppose it would involve the Fourth and Fourteenth Amendments."), the proof of the illegal manner in which the Attorney General prosecuted the doctor is apparent when at page 34a lines 19 through 21, of the Appendix the Court asked "why you haven't gotten these exhibits attached to your papers?" The Attorney General replied to the Court, "I didn't know we had an attorney in the case." See page 35a lines 1 and 2 of the Appendix.

The record without question establishes how both the Court below and the petitioner pro se were misled by the Attorney General that there would be an evidentiary hearing and six (6) witnesses subpoenaed for confrontation and cross-examination.

Itemized sequentially is the proof as it appears in the Appendix (transcript) of the March 21, 1975 hearing, page 44a, line 11 starting with "The Court: They have not taken any

action as yet." through page 45a lines 9 and 10 with the Courts saying "That's when I said you ought to give him an opportunity to subpoena --" through line 19 which reads, "The Court: No, to agree upon a number, I think."

At page 45 a line 25 and page 46a lines 1 and 2 the Court and the petitioner learn that there was "an appellate type review with the Court asking the Attorney General, 'Not with witnesses?'"

At page 47a lines 1 through 9 it reads:

> "The Court: I understood when you [the Attorney General] were before me there was still an opportunity for an evidentiary hearing: otherwise, we wouldn't be talking about subpoenas. Why then would you say I can't give him fifty [witnesses] but its reasonable we will give him six?
>
> Under those circumstances, you led me believe there was still a possibility to have a hearing. Didn't you?"

At page 49a lines 2 and 3 the Attorney General stated that at the evidentiary hearing he "presented no live witnesses."

At page 51a lines 9 through 25 and page 52a line 1 the Court with all its wisdom was betrayed by the Attorney General, how simple it was for the Attorney General to illegally violate the constitutional rights of the petitioner pro se.

"The Court: That is not necessarily true. If he had notice of the other hearing and didn't show up but the point is he came here and I got the impression that there is still a hearing to be held. And he had asked for fifty subpoenas, which request I denied, and I suggested we have six. And you agreed. I thought you agreed that six would be permissible. The actual fact was the hearing was already over and no subpoenas were available because there is no further evidence to be produced.

Is that true?

Mr. O'Grady: That is true.

The Court: That I was misled by you.

Mr. O'Grady: Perhaps, but it wasn't my intention to mislead the Court. Perhaps I wasn't as forceful --

The Court: Forceful or not, the result was the same." (Underlining supplied.)

This systematic abuse by the Attorney General, a quasi-judicial officer and an officer of the Court in the prosecution of this case from the initial charges to the suspension of the doctor's medical license is a gross miscarriage of justice with the doctor "set-up as a target" and denied his constitutional right of due process of law.

"The Fifth Amendment to the Federal Constitituion provides: 'No person shall ... be deprived of live, liberty or property, without due process of law,' and the Fourteenth

Amendment to the Federal Constitution provides in §1: 'No State shall . . . deprive any person of life, liberty, or property, without due process of law.' The federal courts have pretermitted the question whether the practice of law is 'property' under the Fifth Amendment. They have, however, declared that a state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons contravening the due process or equal protection clauses of the Fourteenth Amendment. Schware v. Board of Bar Examiners (1957) 353 U.S. 232, 1 L ed 2d 796, 77 S. Ct. 752, 64 ALR2d 288; Sharp v. Lucky (1958, CA5 La) 252 F2d 910.

Exclusion from an occupation for reasons that contravene due process may be classified as a violation of substantive due process, under the definition of substantive due process as 'the constitutional guaranty that no person will be deprived of his life, liberty, or property for arbitrary reasons.' Exclusion from an occupation in a manner that contravenes due process may be classified as a violation of procedural due process, that is, the right to notice and a hearing and an essentially fair proceeding."

The persistent unfairness of the Attorney General in misleading the Court and the petitioner pro se was systematic,

malicious and tainted. So great a deprivation of a U.S. citizens rights must be protected by direct intervention of our Federal Courts in revoking the suspension of the doctor's medical license -- otherwise "it is a perversion of the American constitutional system."

of medicine by reason of mental disability. The charges

POINT V

FEDERAL ABSTENTION DOES NOT APPLY AND INTERVENTION IS REQUIRED IN THESE UNUSUAL CIRCUMSTANCES WHERE SUBSTANTIAL CONSTITUTIONAL RIGHTS ARE INVOLVED.

Elias Lester, M.D., petitioner pro se instituted his procedures solely on his own with the retention of counsel to appear only on March 21, 1975, the date of the hearing in the Court below.

After dismissal of the case, without prejudice, the Court advised the doctor that he could go "downstairs" and file an appeal. The petitioner pro se, prepared, typed and filed his own appeal on April 7, 1975. The pro se, a man of principle and determined to act on his own then requested of this Court that he be permitted to file a minimum of briefs and appendices and sought an extension of time. This relief was granted him.

With the suspension of his medical license by the Commissioner of Education on April 7, 1975, served April 9, 1975 the doctor felt he could not suffer this loss without assistance of counsel to beseech this Court to retain and decide the constitutional questions involved as he could no longer cope with the rights given him by the Court below, agreed to by the Attorney General and then denied and violated because of the

Attorney General's misrepresentations which as previously established misled the Court and the pro se.

The pro se relied upon the rights given him to have the six (6) witnesses subpoenaed at an evidentiary hearing that both the Court and the pro se believed would take place. The Attorney General knew otherwise at the time of his mispresentations.

These statements appear in the Appendix (transcript) as stated in this agrument in previous points.

The entire procedures from the deliberate preparation and presentation of the charge to the Medical Grievance Committee up and through the scheme of the Attorney General to get the pro se, a "target", at any cost was all part of a plan in concert with an improperly constituted so called Medical Grievance Committee to lift the doctors medical license.

The situation is so extradordinary because of the unfairness of the procedures employed and the prejudicial treatment given this pro se, a U.S. citizen as to require closest scrutiny by a U.S. Court to present further unfairness and serious and substantial injustice perpetrated by an arm of the state, the Attorney General upon this pro se.

The deprivation of the doctor's rights given to him by

the Court below and admittedly agreed to by the Attorney General are matters not appearing, though the subpeonas of witnesses was always asserted and never waived, in the hearings held by the Medical Grievance Committee and the Regents Committee on Discipline. The rights were accorded the pro se in the Federal Court and the mispresentations relied on both by the Federal Court and the pro se, do not appear in the transcripts of any administrative hearings.

To achieve absolute futility would be this Court's direction to the doctor to pursue other remedies, totally devoid of success because what transpired took place was in the Federal Court below and it involves very serious constitutional questions which resulted in substantial injustice.

No effective remedy lies except in this Court. The rule cannot be so inflexible where as in the instant case the circumstances are exceptional.

CONCLUSION

The appellant, who acted pro se, is entitled to invoke the assistance of this Federal Court at this time to annul the determination suspending his medical license.

Respectfully submitted,

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A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
for the Second Circuit

ELIAS LESTER, M.D.,

Petitioner-Appellant,

- against -

EMLYN I. GRIFFITH,

Respondent-Respondent.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **New York** *ss.:*

I, James Steele, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 250 West 146th, Street, New York, New York

That on the **19th** *day of* **June** *19* **75** *at* **261 Madison Ave, N.Y. N.Y.**

deponent served the annexed Brief *upon*

Louis J. Lefkowitz

the **Attorney** *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein.*

Sworn to before me, this **19th** *day of* **June** *19* **75**

Robert T. Brin

James Steele

JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977